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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

MEGHAN ZATO,

Petitioner,

v.

THE SUPERIOR COURT OF ALAMEDA
COUNTY,

Respondent;

OAKLAND POLICE DEPARTMENT et al.,

Real Parties in Interest.

A145527

(Alameda County
Super. Ct. No. 174347)

Petitioner Meghan Zato petitions for a writ of mandate to set aside the superior court's order denying her motion to compel real party in interest to produce certain records for in camera inspection by the court pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531. Following the submission to the superior court of a supplemental declaration of petitioner's counsel in support of the motion, real party filed an opposition objecting to the motion insofar as it requests the production and in camera inspection of documents in "the category of excessive force" but "submit[ing] to the categories of failure to take statements, failure to document and/or collect exculpatory evidence, and making false statements as to demeanor of defendant." On July 9, 2015, this court issued an order (1) notifying the parties that, if appropriate, we might issue a peremptory writ pursuant to *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, (2) staying the trial in this matter, and (3) directing real parties in interest to serve and file points and

authorities in opposition to the petition on or before July 20, 2015. The Attorney General advised this court by letter that it would not be filing an opposition to the petition and real party Oakland Police Department has failed to file an opposition.

Upon a review of the moving and opposing papers filed in the superior court, we are satisfied that petitioner has made a sufficient showing of materiality to require the production and in camera inspection of those documents as to which real party submitted, namely, documents maintained by real party under the names of Officer C. Remo #9125 and Officer Kristine Jurgens #9131 which record or reflect any instance of conduct in which either officer failed to take statements, failed to document and/or collect exculpatory evidence, or made false statements as to the demeanor of a defendant or otherwise reflected dishonesty. The supplemental declaration from petitioner's counsel states on information and belief that the two police officers "fail[ed] to document additional witnesses to the incident and fail[ed] to record interactions with witnesses that corroborated Ms. Zato's version of events and defense," and in their reports "exaggerated and/or lied about certain interactions with Ms. Zato because they were biased against her." We agree with real party and the trial court that this showing does not justify production and inspection of documents relating to possible use of excessive force by the two officers, but the showing is sufficient to require production and in camera inspection of documents that may reflect misconduct of the type specified herein. There is a "logical link" between the defense that petitioner describes and the pending charges, and petitioner has articulated how the discovery will support her defense and "impeach the officer's version of events." (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1021.) Petitioner has presented a "plausible factual foundation for the claim of officer misconduct" (*id.* at p. 1025) because "a plausible scenario of officer misconduct is one that might or could have occurred. Such a scenario is plausible because it presents an assertion of specific police misconduct that is both internally consistent and supports the defense proposed to the charges." (*Id.* at p. 1026.) "[T]o obtain in-chambers review a defendant need only demonstrate that the scenario of alleged officer misconduct could or might have occurred." (*Id.* at p. 1016.)

The petition is unopposed and no useful purpose would be served by the issuance of an order to show cause, further briefing, and oral argument. (*Ng v. Superior Court* (1992) 4 Cal.4th 29, 35; see also *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1236-1237, 1240-1241.) Therefore, the superior court is hereby directed to set aside its order denying petitioner's motion to compel real party in interest to produce records for in camera inspection by the court and to enter a new order directing real party in interest to produce for the court's in camera inspection documents maintained by real party under the names of Officer C. Remo #9125 and Officer Kristine Jurgens #9131 which record or reflect any instance of conduct in which either officer failed to take statements, failed to document and/or collect exculpatory evidence, or made false statements as to the demeanor of a defendant or otherwise reflected dishonesty. We express no opinion as to which documents presented to the court for in camera review should be disclosed to or withheld from petitioner. (See *Warrick v. Superior Court*, *supra*, 35 Cal.4th at p. 1019.)

The stay, previously issued by this court, is dissolved.

Pollak, Acting P. J.

We concur:

Siggins, J.

Jenkins, J.